GERSTEIN ET AL. v. COE ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 73-1137. Decided June 3, 1974

State's appeal under 28 U. S. C. § 1253 from a declaratory judgment of a three-judge District Court invalidating a state statute dismissed for want of jurisdiction, since § 1253 does not authorize appeal to this Court from the grant or denial of declaratory relief alone.

Dismissed for want of jurisdiction; certiorari before judgment by Court of Appeals denied.

PER CURIAM.

A three-judge District Court entered a declaratory judgment holding unconstitutional a Florida statute, Fla. Stat. Ann. § 458.22 (3) (Supp. 1974–1975), which forbids an abortion without the consent of the husband, if the woman is married, and if unmarried and under the age of 18, without the consent of a parent. Because it was anticipated that the State would respect the declaratory judgment, the court declined to issue an injunction against the enforcement of the statute. The State of Florida appeals from the declaratory judgment invalidating the statute. The appeal is dismissed for want of jurisdiction. Title 28 U. S. C. § 1253, under which this appeal is sought to be taken, does not authorize an appeal from the grant or denial of declaratory relief alone. *Gunn* v. *University Committee*, 399 U. S. 383 (1970); *Mitchell* v. *Donovan*, 398 U. S. 427 (1970); *Rockefeller* v. *Catholic Medical Center of Brooklyn & Queens, Inc., Division of St. Mary's Hospital*, 397 U. S. 820 (1970); see also *Roe* v. *Wade*, 410 U. S. 113, 123 (1973). The declaratory judgment is appealable to the Court of Appeals, and we are informed that an

appeal to that court has already been taken. It is suggested that we treat the statement of jurisdiction as a petition for certiorari before judgment in the Court of Appeals pursuant to 28 U. S. C. § 1254 (1). The petition for certiorari is denied.